

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

IN THE MATTER OF THE)	
EXTRADITION OF)	No. 08-MJ-430
)	
JAYANT MUKUNDRAY PATEL)	ORDER re: RESPONDENT'S
)	RELEASE
_____)	

HUBEL, Magistrate Judge:

On March 11 2007, Dr. Jayant Mukundray Patel was arrested at his residence in the Portland area. His arrest was based on an extradition complaint from Australia. His extradition is sought pursuant to 18 to U.S.C. § 3184, the extradition provisions in force between the United States and Australia signed on May 14, 1974, and the protocol amending the treaty on extradition between United States and Australia, signed on September 4, 1990.

Dr. Patel has been indicted on charges in Australia which include three counts of manslaughter, three counts of grievous bodily harm, two counts of negligent acts causing harm, seven counts of fraud, and one count of attempted fraud. These charges all stem from his work as a physician in Queensland, Australia between the years 2003 and 2005.

1 - ORDER REGARDING RESPONDENT'S RELEASE

1 At a hearing on March 18, 2008, Dr. Patel sought his release
2 from custody pursuant to this Court's previously entered temporary
3 order of detention. He sought to establish that he is neither a
4 flight risk, nor a danger to the community, and attempted to
5 establish special circumstances justifying his release during the
6 pendency of this extradition proceeding. At his request, Assistant
7 Federal Defender Susan Russell represented Dr. Patel at the release
8 hearing. The Court has subsequently determined that Dr. Patel does
9 not qualify for appointed counsel.

10 APPLICABLE LAW

11 The federal extradition statute, 18 U.S.C. § 3181, provides no
12 explicit authority for a District Court to release a respondent on
13 bail. Thus, release is generally not available in extradition
14 cases. See Wright v. Henkel, 190 U.S. 40, 63 (1903). The
15 presumption against bail or release is to ensure the ability of the
16 United States government to fulfill its obligation to the
17 requesting country to deliver its suspect at the conclusion of the
18 extradition proceeding. Id. at 62; see also Salerno v. United
19 States, 878 F.2d 317, 317 (9th Cir. 1989) (noting presumption
20 against bail in extradition cases). Release on any conditions
21 provides an opportunity to abscond, potentially resulting in a
22 "serious embarrassment" to the country and creating the potential
23 reciprocal non-compliance by other countries. Wright, 190 U.S. at
24 62. In the extradition setting, national foreign policy interests
25 therefore may often outweigh the respondent's individual liberty
26 interests. In re Extradition of Orozco, 268 F. Supp. 2d 1115,
27 1116-17 (D. Ariz. 2003).

28 The burden rests on the extradition respondent to show by

1 clear and convincing evidence that he or she is neither a risk of
2 flight, nor a danger to any other person in the community. United
3 States v. Ramnath, 533 F.Supp 2d 662, 665 (E.D. Tex. 2008). Proof
4 that an extradition respondent is not a flight risk is, without
5 more, an insufficient ground for release on any conditions pending
6 the extradition hearing. Salerno, 878 F.2d at 318. The respondent
7 in an extradition proceeding must establish special circumstances
8 favoring release. Wright, 190 U.S. at 63. In some jurisdictions,
9 the special circumstances must be established by clear and
10 convincing evidence. In re Extradition of Gonzalez, 52 F. Supp. 2d
11 725, 735 (W.D. La. 1999). Whether special circumstances have been
12 established is left to the discretion of federal trial judges. Id.
13 at 736. The court's limited power to grant release in cases
14 involving foreign extradition "should be exercised only in the most
15 pressing circumstances, and when the requirements of justice are
16 absolutely peremptory[.]" In re Mitchell, 171 F. 289, 289
17 (S.D.N.Y. 1909).

18 Later cases have recited many circumstances which a court may
19 consider in evaluating whether the extradition respondent has
20 established special circumstances justifying his or her release.
21 Such circumstances include:

- 22 1) length of proceedings and detention;
- 23 2) the need to consult with counsel;
- 24 3) health of the respondent;
- 25 4) age of the respondent;
- 26 5) availability of release in the requesting
- 27 jurisdiction;
- 28 6) likelihood of success in the extradition

proceeding;

7) likelihood of success in the requesting jurisdiction;

8) deprivation of religious practices while incarcerated;

9) the nature of the respondent's alleged conduct; and

10) the maximum and likely sentences in the charging jurisdiction.

United States v. Garcia, 340 F.3d 1013, 1019-21 (9th Cir. 2003).

DISCUSSION

After considering these circumstances as presented in the written briefs of the parties, and in the oral argument at the hearing on March 18, 2008, I conclude that respondent should be detained for the duration of these extradition proceedings, with leave to request that this decision be reviewed after respondent and counsel of his choosing have reviewed the materials submitted by the government in support of the extradition complaint and which the government plans to present at the extradition hearing.

While much of the evidence establishes that the respondent may be unlikely to flee if released, no evidence has been presented with respect to the likelihood of success in either the requesting jurisdiction's criminal proceeding, or in this extradition proceeding. The penalties which the respondent potentially faces if extradited and convicted in Australia are substantial enough to create a motive to flee. The respondent's arguments regarding the motivation for the prosecution in Australia also suggest a motive to flee. Certainly the respondent has more than sufficient assets available with which to flee. Therefore, despite the tenor of much

1 of the evidence suggesting that the respondent will not flee, the
2 motivation and means to flee cannot be ignored. Moreover, this
3 Court does not have adequate information before it to eliminate or
4 moderate the possibility that respondent could regain his Indian
5 citizenship and potentially an Indian passport with which to
6 travel.

7 Additionally, while respondent had difficulty obtaining a diet
8 consistent with his religious practices when he was first
9 incarcerated, the Court is advised that pursuant to the Court's
10 Order, this problem has been remedied and respondent now receives
11 appropriate meals on a regular basis. The record to date does not
12 suggest that these extradition proceedings need to be protracted.
13 No record has been made regarding a substantial difficulty for the
14 respondent to consult with counsel. The court has not been made
15 aware of any health or age problems arguing for the respondent's
16 release.

17 The Court has considered respondent's remaining arguments and
18 finds that they do not singly or in combination, create special
19 circumstances as required for release. Therefore, special
20 circumstances having not been established, and an equivocal record
21 on flight risk, suggest that release should be denied. Respondent
22 may seek review of this decision if he has new information to
23 present at a later time.

24 IT IS SO ORDERED.

25 Dated this 4th day of April, 2008.

26 /s/ Dennis J. Hubel

27 _____
28 Dennis James Hubel
United States Magistrate Judge